

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

ALY SEPEDA, §  
Plaintiff § CIVIL ACTION NO. 4:11-CV-03091  
§  
vs. §  
§  
MODEC INTERNATIONAL, INC. § JURY TRIAL DEMANDED  
Defendant §

**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR LEAVE TO FILE A  
REPLY IN SUPPORT TO ITS MOTION TO COMPEL**

The Court should deny Defendant's Motion for Leave to File yet another brief in support of its meritless Motion to Compel. In support, Sepeda states as follows:

1. The motion is improper because it fails to include a Certificate of Conference as required under the Local Rules. *See* L.R. 7.1.D. Counsel did not even call to confer, let alone include the required Certificate.

2. If they had called, the undersigned would have told them the issue is moot. There are four medical providers at issue. Sepeda requested records from each of them. The records from all but one were received prior to March 16. Those were reviewed and, upon determining that there was no reason to withhold any or seek further protection from the Court, they were produced in their entirety on March 16. This production, approximately 130 pages, was received by MODEC's counsel on March 19. *See* Exhibit 1. Yet, MODEC insists upon filing a reply without ever mentioning its receipt of the medical records.

The remaining records were received on March 22. They also have been reviewed and, like the other records, will be produced in their entirety in short order.

3. At some point, common sense must prevail. MODEC wants the medical records but Rule 34 does not permit it or this Court to compel execution of an authorization that does not presently exist. Plaintiff has all along pledged to gather and produce the documents in a way that protects Ms. Sepeda's privacy interests and respects the Federal Rules, but this has been so unsatisfactory for MODEC that it has submitted more than 19 pages of briefing. By next week, all the records will have been produced. Other than the satisfaction of engaging in scorched-earth litigation tactics, it is unclear what more MODEC wants.

**CONCLUSION**

The Court should deny the Motion for Leave to File a Reply. The Court should deny the Motion to Compel. Most of Sepeda's medical records have already been produced, and the remaining balance will be produced by next week.

A proposed order is attached.

Respectfully submitted,

DOW GOLUB REMELS & BEVERLY, LLP

/s/Katherine M. Gonyea

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ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

I hereby certify that on March 23, 2012, a true and correct copy of the foregoing instrument was served electronically upon all counsel of record through the court's ECF system.

/s/Katherine M. Gonyea

Katherine M. Gonyea